



webmaster@csa-dc.org on 06/29/2001 01:28:22 PM

To: farcase.2001-014@gsa.gov
cc:

2001-014-805

Subject: Reference: Far Case 2001-014

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Friday, June 29, 2001

General Services Administration
FAR Secretariat (MVR)
Attn: Ms. Laurie Duarte
1800 F Street NW
Room 4035
Washington, D.C. 20005

Reference: Far Case 2001-014

Dear Ms. Duarte:

BAE SYSTEMS AEROSPACE INC - CNI is pleased to submit its comments regarding the proposed reconsideration and revocation of FAR rule on Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings (December 20, FAR Case 1999-010).

BAE SYSTEMS AEROSPACE INC - CNI believes in high ethical performance standards, and we invest substantial company dollars training each year for each of our employees as to the level of ethical conduct we expect from them. That said, we do not believe there has been any indication that contracting officers are doing business with companies that lack the necessary integrity to contract with the federal government.

BAE SYSTEMS AEROSPACE INC - CNI sells high technology, military products to the U.S. Government and other approved governments in the area of inertial products, avionics products, Command Control Communications Information products and C4I systems. Much of our work is governed by stringent U.S. Security and Export controls. Our ability to sell our products hinges directly from our ability to prove a high level of capability, reliability, and integrity to our customers.

We strongly support revocation of the December 20 rule. That rule is unwarranted and unworkable. The rule's changes are unnecessary because the protections proffered are already, more appropriately, covered elsewhere in statute and regulation. The rule requires contracting officers to make responsibility determinations on the basis of vague and ill-defined criteria that are outside their normal areas of expertise and training.

And, the rule is a step backward from the previous six years of streamlining initiatives, which were aimed at making the procurement process function more effectively. The requirement for a certification is contrary to congressional direction in the 1996 Clinger-Cohen Act directing the Office of Federal Procurement Policy to eliminate all non-statutory certification requirements imposed on government contractors. And it is contrary to the stated goals of the Bush Administration for the government to utilize greater commercial practices.

The impact of this uncontrollable legislation would result in tremendous

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increases in litigation expenses for both industry and the government due to misapplication of authority by government personnel who have not been trained to make judicial decisions. This misapplication would result from both the subjectively in interpretation of what constitutes a transgression and the subjectively in implementation by government personnel who possess varying levels of education and capability.

As service contractors, we already are bound by a number of labor laws and regulations that are solely enforceable by the Department of Labor. These laws include:

The Service Contract Act

Davis-Bacon Act (enforced by individual agencies)

Contract Work Hours and Safety Standards Act

Family Medical Leave Act

Fair Labor Standards Act

OSHA

OFCCP (Affirmative Action)

NLRB (National Labor Relations Board)

Americans with Disability Act

Under the December 20 rule, determinations of non-responsibility are authorized by contracting officers who are not trained in the complexities of these labor laws.

The disallowance of costs arising out of activities related to assisting, promoting or deterring employee decisions regarding unionization would monumentally expand, rather than simply clarify, the existing procurement laws and regulations related to cost principles and what is allowable or unallowable on government contracts as a normal cost of doing business. A government contract is an expensive and inappropriate vehicle for advancing such an agenda. There are ample existing cost principles dealing with legal and defense costs.

In summary, the December 20 final rule should be withdrawn - it is fundamentally flawed policy and cannot be fixed. Furthermore, it is an unnecessary encumbrance on the acquisition process, and ignores the doctrine of fairness that is so fundamental to government procurement. Finally, it would place a burden on the contracting officer that is beyond that official's ability to implement in an equitable and coherent fashion.

BAE SYSTEMS AEROSPACE INC - CNI appreciates the opportunity to respond to the reconsideration and proposed revocation of the December 20 Contractor Responsibility rule - and urges the FAR Council to repeal this unworkable rule.

If you should have any questions regarding this matter, please contact me at maryann.piazza@baesystems.com or by telephone at (973) 633-4300 or in writing to the address listed below. Your consideration is greatly appreciated.

Sincerely,

MARY ANN J. PIAZZA
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